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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 31/2021

ABHIJIT MISHRA

.....Plaintiff

Through: Mr. Prakhar Gupta, Adv

versus

WIPRO LIMITED

..... Defendant

Through: None.

CORAM:

MS. VANDANA JAIN (DHJS) JOINT REGISTRAR(JUDICIAL)

ORDER

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11.10.2021

[Virtual Court Hearing]

IA No. 8849/2021 (Under section 30 read with Order XI Rule 14, 15 & 16 CPC filed by Plaintiff seeking production of document)

By this order, I shall dispose of an application (under section 30 read with Order XI Rule 14, 15 & 16 CPC) moved by plaintiff for seeking production of documents as mentioned by defendant in its written statement.

Plaintiff in person is an advocate and had argued that he has filed the present suit for defamation and damages caused by defendant to which the written statement was filed by defendant wherein the defendant has made several statements against the character of the plaintiff. He had further argued that defendant has not filed a single document on record to substantiate its claims therefore, plaintiff is constrained to file the present application.

CS(OS) 31/2021

Page 1 of 14



Plaintiff had further argued that in para No. B of the Preliminary Statement of facts in the written statement, it has been stated that “plaintiff was non-proforma during his tenure as an employee with the defendant, but it had not produced any document to substantiate its claim”, therefore, defendant be directed to produce the following documents:-

- i. Annual and Quarterly Performance Records of the Plaintiff.*
- ii. Defendant’s Policy of Performance Improvement Plan.*
- iii. Plaintiff’s unconditional acceptance to the said Performance Improvement Plan*
- iv. Defendant’s response to the Plaintiff’s objections to the said Performance Improvement Plan.*
- v. Documents as referred by the Defendant by written statement.”*

Plaintiff had further argued that in para No. C of the preliminary statement of facts in the written statement, defendant has claimed that “the plaintiff’s services were terminated strictly in accordance of contract of the employment” however, no document has been produced to substantiate the aforesaid claims. Therefore, defendant be directed to produce the document as under:-

“ i. Defendant’s Human Resource Department Charge Sheet as served upon the Plaintiff that refers to the actions and malicious conduct as per statement in the Termination Letter that states “*We were compelled to take this difficult decision on account of a complete loss of trust and confidence between us due to your actions and malicious conduct in the past weeks.*”

CS(OS) 31/2021

Page 2 of 14



Plaintiff had further argued that in para D of Preliminary Statement of facts in the written statement of defendant has claimed that “ plaintiff has commenced a campaign to harass and torments the officers of the defendant by filing false complaints”, but no document has been produced. Therefore, defendant be directed to produce the documents:-

“i. The copy of the Writ Petition under aegis of Article 226 of the Constitution of India that is claimed to have been filed by Plaintiff before the Hon’ble High Court of Punjab and Haryana, to seek a direction for registering his complaint as First Information Report.

ii. The copy of the Special Leave to Petition under aegis of Article 136 of the Constitution of India that is claimed to have been filed by Plaintiff before the before the Hon’ble Supreme Court of India which has failed / dismissed against the impugned order of the Writ Petition as mentioned above.”

Plaintiff had further argued that in para No.9 of response on merits of the written statement, defendant has claimed that “all allegations of denial of natural justice or denial of a right to be heard are denied” therefore, defendant be directed to produce the documents:-

i) Defendant’s Human Resource Department Charge Sheet upon the Plaintiff to demonstrate that Plaintiff was afforded with an opportunity under Right to Natural Justice (*Audi Alteram Partem*) to defend against the charges as mentioned in the Termination Letter that states “*We were compelled to take this difficult decision on account of a complete loss of trust and confidence between us due to your actions*”



and malicious conduct in the past weeks. Please note that the termination letter is annexed as DOCUMENT NO. 3 of the main plain which has been admitted by the Defendant in the affidavit of admission and denial.

ii) Defendant's Reply to the Appeal claiming violation of Right to Natural Justice (*Audi Alteram Partem*) against the Termination Letter as filed by the Plaintiff. (Please note that the termination letter is annexed as DOCUMENT NO. 5 of the main plain which has been admitted (contents denied) having been received by the Defendant in the affidavit of admission and denial.)

Plaintiff had relied upon the judgement of ***Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira, (2012) 5 SCC 370***, wherein by Hon'ble Supreme Court has opined that Section 30 of CPC should be used to ascertain the truth in the pleadings and, therefore, in order to ascertain the truth in the written statement of defendant, the defendant be directed to produce these documents.

He had also relied upon the judgment titled as ***Naveen Jindal v. M/s. Zee Media Corporation Ltd. & Anr (2017 SCC OnLine Del 8209)*** wherein Hon'ble Supreme Court has observed that Under Order XI Rule 14 CPC should be used to produce the documents to determine the contents of the pleadings.

Plaintiff had further relied upon the judgment titled as ***CTT v. Kajaria Ceramics Ltd., (2005) 11 SCC 149*** wherein Hon'ble Supreme Court has observed that "onus probandi lies on the person who makes a claim before Hon'ble Court by virtue of Section 101



of The Indian Evidence Act, 1872” and therefore, defendant be directed to produce the aforesaid documents. He had further argued that plaintiff would suffer irreparable loss in the absence of the said documents and therefore, aforesaid application be allowed.

On the other hand, learned counsel for defendant has vehemently opposed the application stating that the application is completely frivolous and the production of these documents are not necessary for disposing fairly the suit or for saving costs. She had further argued that plaintiff has purportedly filed a civil suit for defamation and damages and defendant has contended in the written statement that the suit does not disclose any cause of action as no case of defamation has been set out in the plaint. She had further argued that the plaintiff has not followed the procedure prescribed in law that is to give notice to defendant as envisaged under Order XI Rule 15 CPC before moving this application.

She had further argued that in order to invoke this provision, plaintiff will have to first satisfy that there was indeed a defamation either through broadcast or transmission to the members of public and without doing so, it is premature for him to demand the production of any such document.

Learned counsel for defendant had further argued that defendant has terminated the services of plaintiff vide the relieving letter issued to the plaintiff, outlining the reasons for the same and in this case, no defamation is made out and therefore, plaintiff cannot ask the defendant to produce any document without showing first



cause of action to file the suit.

She had further argued that ratio of the judgments relied by learned counsel for plaintiff are not at all disputed, but none of them applies to the facts of the present case and therefore, application moved by plaintiff is liable to be dismissed.

In order to rebut the arguments of learned counsel for defendant, plaintiff has filed a replication and has also orally argued that the arguments addressed by learned counsel for defendant are misconceived and the application deserves to be allowed.

I have heard the arguments of learned counsel for parties and have perused the record carefully.

Before advertng to the application, it is necessary to discussion the provisions under Order XI Rules 12 and 14 CPC.

Order XI Rule 12 CPC specifically provides that:-

*“Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion be thought fit :
Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.*



Order XI Rule 14 CPC provides:-

“It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just”.

Now let's dwell upon the proposition laid down by Higher Courts under this provision.

*“ In case of **Bustros vs White 1876, 1QBC 423**; it was held that the Court has no discretion to refuse production provided the documents relate to the matter in question and are not privileged. The power to order production of documents is coupled with the direction to examine the expediency, justness and the relevancy of the documents to the matter in question. ”*

The provisions make it amply clear that before giving a direction to a party to make discovery of document in his possession or power or for production of document, the Court has to be satisfied that the document in question is relevant for proper adjudication of the matter involved in the suit. The privilege vested in a party to the suit by the provisions under Order XI Rule 12 & 14 of the Code is not intended to enable him to cause a roving enquiry fish out information which may or may not be relevant for disposal of the suit. No doubt, the party seeking discovery or production of the document need not satisfy the court that the document in question is admissible as evidence in the suit; it would be sufficient to show that the contents of the document would throw light on the subject matter of the suit. Unless these basic requirements are insisted upon by the court before issuing a direction under the aforesaid provisions, the provisions are likely to be utilized for harassing the other instead of helping in proper adjudication of the dispute in the case.”

CS(OS) 31/2021

Page 7 of 14



In case of ***Cimmco Ltd Shyam Mohan Jain AIR 1997 Raj, 180***, it was held that:-

“ 9. In the instant case, the trial Court while allowing the application of the plaintiff has only observed that "summoning of service books is necessary." The expediency, justness and the relevancy of the service books to the matter in question has not been examined. The relevant consideration which the trial Court ought to have weighed, were not adverted to before taking decision about summoning of the service books. Such an approach of the trial Court cannot be termed as 'judicial approach.' It is not the intention of the Legislature that such an order should be made as a matter of routine and as one of no serious consequences.

In case of ***Sasanagouda v. Dr S. B. Amarkhed & Ors AIR 1992 SC 1163***, it was observed by the Apex Court that *under Order XI Rule 14 CPC*,

“the Court is clearly empowered and it shall be lawful for it to order the production, by any party to the suit, such documents in his possession or power as relate to any matter in question in the suit provided the Court shall think right that the production of the documents are necessary to decide the matter in question. The Court also has been given power to deal with the documents when produced in such manner as shall appear just. Therefore, the power to order production of documents is coupled with discretion to examine the expediency, justness and the relevancy of the documents to the matter in question. These are relevant considerations which the court shall have to advert to and weigh before deciding to summoning the documents in possession of the party.”

With this background of law, I shall proceed to decide the present application on merits. The case of plaintiff is that he was appointed by defendant as a Principal Consultant between 14.03.2018 to 05.06.2020 and was terminated vide discharge letter dated 05.06.2020. It has been stated that
CS(OS) 31/2021

Page 8 of 14



defendant has terminated services of plaintiff in exercise of its prerogative powers under clause 10 of the Employees Contract which is as follows:-

Clause 10. Notice Period of the Employment Contract

“This contract of employment is terminable, without reasons, by either party giving one month notice during probationary period and two months and notice on confirmation. Wipro reserves the right to pay or recover salary in lieu of notice period. Further, the Company may at its discretion relieve you from such date as it may deem fit even prior to the expiry of the notice period.”

Plaintiff has stated that in the termination/discharge letter, the defendant has terminated services of the plaintiff by mentioning highly defamatory, derogatory and vexatious statements about the character of the plaintiff and the relevant excerpts of the impugned termination letter is as follows:-

“We were compelled to take this difficult decision on account of a complete loss of trust and confidence between us due to your actions and malicious conduct in the past weeks. We believe that an effective and fruitful employer-employee relationship between Wipro and you is no longer possible as we have lost the trust that you will be able to perform your duties without prejudice and serve our clients effectively or work with our other employees as a team.”

Plaintiff has denied all such allegations as levelled upon him in the said termination letter and has stated that he has even appealed to the Management of the defendant. However, he was not heard and the principle of natural justice have been completely ignored by defendant. It is also stated that defendant has not been able to provide even an iota of evidence of any wrong doing by

CS(OS) 31/2021 Page 9 of 14



plaintiff.

The main grievance of the plaintiff in the present suit is that while he had applied for another employment after termination of his services by defendant, prospective employers have denied the employment citing the defamatory contents given in the termination letter of the plaintiff issued by defendant. He further argued that he is unemployed since thereafter and has not been able to become a gainful employment.

During the course of the arguments, plaintiff has argued that reading of the termination letter by the prospective employers and denial of gainful employment to him due to the said contents of the said termination letter tantamounts to defamation by defendant. The written statement to the plaint has been filed by defendant wherein it is stated that there is indeed no defamation at all. Therefore, the plaint does not disclose any cause of action and resultantly, there is no question of production of any documents under this provision document.

Order XI Rule 12 & 14 CPC specifically provides that any party can be directed to produce or discover the documents in case they are relating to the matter in question and are required for either disposing fairly of the suit or for saving costs.

In normal circumstances and on plain reading of this provision, there would not have been any prejudice to the defendant, in case it was directed to produce the documents as



sought for, but there is more to be considered before asking the other side to produce the documents which supports the defence of defendant.

In the written statement filed by defendant, it has referred to e-mail dated 09.03.2020 in para No. A of the Preliminary Statement of facts in the preliminary objections. The corresponding para in the replication does not find mention of any denial to the said e-mail.

In para No. B of the Preliminary Statement of facts in the written statement, defendant has mentioned that “for many months, emails were exchanged” however, there is no denial to the same in the replication.

It is pertinent to mention here that while filing the plaint, plaintiff has relied upon few documents however, no e-mail correspondence between the parties have been placed on record. Plaintiff has only relied upon a termination letter, employment contract, appeal against termination letter and alleged rejection letter issued by prospective employers. Therefore, the plaintiff chose not to file everything alongwith the plaint which he had concerning this case and has exercised his discretion regarding the same.

It is the main objection of defendant to the captioned IA that there was no defamation at all. It is no where case of the plaintiff that defendant at any point of time had publicised this termination letter or had leaked it to third party in order to lower the reputation



While deciding this application under Order XI Rule 12 & 14 CPC expediency, justness and the relevancy of the documents to the matter in question have to be examined. Though undoubtedly certain defences have been taken by defendant in the written statement without supporting them with the relevant documents, but at the same time, it is worthwhile to note that it is primarily the duty of the plaintiff to prove his own case. In the present case, it is yet to be shown/proved by plaintiff as to whether there is any defamation or not.

In the judgment passed by Hon'ble High Court of Delhi titled as *Harvest Securities Pvt Ltd & Anr vs B. P. Singapore Pvt Ltd & Anr (2014 SCC Online Del 2384)* which is as follow:-

"16. Let us first see the reasons for termination of employment of the plaintiff No.2. The letter dated 18th September, 2009 of the defendant no.2, of termination of employment of the plaintiff no.2, is titled "Private & Confidential" and informs the plaintiff no.2 that the disciplinary proceedings panel had found all four charges against the plaintiff no.2 satisfied, namely, that the plaintiff no.2:-

"1. breached duly notified rules or instructions in that you have either abused or willfully disregarded the BP Travel Expenses Policy and code of Conduct with regard to personal travel expenses;

2. profited, or attempted to profit, from dealing in shares in CALS Refineries Limited (GALS) on the basis of „inside information" (information that was not publically known and would affect the price of those securities fi made public);

3. otherwise failed to avoid a conflict of interest in the negotiations with CALS by using for your own profit confidential and sensitive information obtained directly through acting in commercial negotiations for BP; and

4. acted unlawfully with regard to use of the inside information

described above."and accordingly dismisses the plaintiff no.2 from employment.

17. It is not the plea of the plaintiffs that the defendants had leaked the letter dated 18th September, 2009 (supra) of termination of employment of the plaintiff no.2 and which is marked "Private & Confidential" and which is addressed only to the plaintiff no.2, to any other person and thereby defamed or maligned the plaintiff no.2. The only case as aforesaid is, that other employees of the defendants are aware of the reasons for which the employment of the plaintiff no.2 was terminated and that the defendants when contacted by a prospective employer of the plaintiff no.2 to check the credentials of the plaintiff no.2, have given a negative report of the plaintiff no.2. What we have to determine is whether the same can constitute the defamation, for the suit to be put to trial".

CS(OS) 31/2021

Page 12 of 14



18. I am of the view that the mere fact that other employees of the defendants are aware of the reason for termination of employment of the plaintiff no.2 cannot per se constitute defamation, without the plaintiffs specifically averring that the defendants, without being required to make the other employees aware, have, with an intent to malign and defame, published the details of the reasons for which the plaintiff no.2 has been removed from employment. No such pleas also exist in the plaint. In the normal course of human behavior and conduct, when one of several employees of an organization suddenly leaves, the others are bound to get curious and merely because they, out of such curiosity, learn or assume the reasons for their colleague leaving, cannot make the employer liable for compensation for defamation. Rather, in my opinion, the employer is bound to inform them of such reasons, to avoid speculation and resultant unrest in the organization affecting its business and to inculcate faith in the employer.

19. As far as the other aspect, of the defendants when contacted by the prospective employers of the plaintiff no.2 to check the antecedents / credentials of the plaintiff no.2 giving a negative report of the plaintiff no.2, I am of the view that such inquiries, made by prospective employers from the earlier employer, of the person whom they are considering to employ, and honest response thereto are essential / necessary for trade and business to flourish, specially for professionally managed organizations, the very functioning whereof is dependent on each of their officials on his / her own, without being under the watch of any owner / proprietor of the organization, conducting the affairs of the organization diligently and honestly. If it were to be held that the ex-employer is barred, when approached by prospective employers, from expressing its opinion of the merits / de-merits / character / acumen of an ex-employee and / or that a prospective employer is not entitled to so enquire from the ex-employer, the same would be against the public policy and against the larger interest of such professionally managed organizations. I see no harm in such enquiries being made and which remain largely confidential in nature."

In view of this judgment, the documents sought to be produced are not necessary at least at this stage to decide the case fairly. Once the plaintiff discharge the burden of proving his case, then only the onus will be shifted to the other party either to shake the case of the plaintiff or to prove its defence. The documents sought by the plaintiff are with respect to the performance of the plaintiff or petitions allegedly filed by plaintiff against officers of the defendant, the defendant's Human Resource Department Chargesheet upon plaintiff which cannot prove the case of defamation as alleged by plaintiff. It is pertinent to mention here

CS(OS) 31/2021

Page 13 of 14



that plaintiff has not sought any prayer for declaration that discharge/termination letter be declared null & void. Therefore, these documents cannot be termed as relevant for the adjudication of the case.

I do not find any merits in the aforesaid application, hence application stands dismissed. It is clarified that nothing mentioned in the order shall tantamount to expression of opinion on the merits of the case. IA stands disposed of accordingly.

VANDANA JAIN (DHJS)
JOINT REGISTRAR(JUDICIAL)

OCTOBER 11, 2021
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CS(OS) 31/2021

Page 14 of 14



\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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ABHIJIT MISHRA Plaintiff
Through: Mr. Prakhar Gupta, Adv

versus

WIPRO LIMITED Defendant
Through: None.

CORAM:
MS. VANDANA JAIN (DHJS) JOINT REGISTRAR (JUDICIAL)
ORDER
% **11.10.2021**
[Virtual Court Hearing]

Vide separate order, IA No. 8849/2021 (under section 30 read with Order XI Rule 14, 15 & 16 CPC) moved by plaintiff for seeking production of documents as mentioned by defendant in its written statement stands dismissed.

Documents, if e-filed be filed physically by parties so as to conduct the admission/denial of documents.

After completion of pleadings, Joint Documents Schedule in terms of Rule 7 A of Chapter VII of The Delhi High Court (Original Side) Rules, 2018 after getting it signed by defendants, be also filed by plaintiff within two weeks positively.

List for marking of exhibits to the documents on 10.11.2021.

VANDANA JAIN (DHJS)
JOINT REGISTRAR (JUDICIAL)



At this stage, Ms. Ragini Vinaik, proxy counsel for Ms. Anjali Sharma, Advocate has appeared on behalf of defendant and she has been apprised of the proceedings in the Court.

VANDANA JAIN (DHJS)
JOINT REGISTRAR (JUDICIAL)

OCTOBER 11, 2021
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